IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 22637 of 2007(T)

OS.1016/1999 of II ADDL.SUB COURT,THRISSUR
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PETITIONER:
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1. IGNUS, S/O.CHIRIYANKANDATH INASSU, ELTHURUTHU DESOM, ARANATTUKARA VILLAGE, THRISSUR TALUK.

2. DAVIS, S/O.ANTHONY, PULIKOTTIL HOUSE, CHIYYARAM VILLAGE, DESAM, THRISSUR TALUK.

3. BEENA, W/O.JOY, CHIRIYANKANDATH HOUSE, NELLIKUNNU DESAM, OLLUKKARA VILLAGE, THRISSUR TALUK.

4. VALSA, W/O.JOHNSON, THOTTAN HOUSE, NELLIKUNNU DESAM, OLLUKKARA VILLAGE, THRISSUR TALUK.

BY ADV. SRI.RAJIT
SRI.RANJIT BABU

RESPONDENTS:
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1. SHAKTHAN KURIES AND LOANS, THRISSUR.

2. THOMAS, S/O.ANTHONY, PANENGADAN HOUSE, CHELAKKOTTUKARA DESOM, CHIYYARAM VILLAGE, THRISSUR TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 22637 OF 2007

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Dated this the 24th day of July, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside the order Ext.P3. The learned counsel for the writ petitioner submits that another application I.A.2938/03 is pending before the I Addl. Subordinate Judge's Court with respect to the same property and claim. But he would submit, now in this case it is the execution stage where he is about to be deprived of his property when a claim petition is filed under Order 21 Rule 58 or so. Under Order 21 Rule 59 the Court is empowered to stay the execution of the decree till the claim is adjudicated as if it is a suit as contemplated under the provisions of order 21 Rule 101 CPC. Therefore, the Court cannot dismiss this application in this fashion without adjudicating the right. The learned counsel for the writ petitioner undertakes before me that he will not be prosecuting the other application which is pending before the I Addl.SUB Court. If it is so, naturally this petition has to be considered on merits. I am not going into

the merits or other legalities involved but I hold that the Court below shall consider this application in accordance with law and dispose it of in accordance with law. Therefore, the order under challenge is set aside and the matter is remitted back to the executing Court for fresh consideration and it shall fix a date of appearance for the parties and dispose the matter as expeditiously as possible.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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